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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1949

No. 642

MINNIE KEYES, *Petitioner,*

v.

K. E. MADSEN, Assistant Engineer Commissioner in Charge of Buildings for the District of Columbia, et al., *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION

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DIVISION OF PRINTING AND PUBLICATIONS—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 55-58) is not yet reported.

COUNTER STATEMENT OF THE CASE

Petitioner is and for a number of years has been the owner of eleven 61-year-old attached frame houses situated on P Street, between First and Second Streets, S. W. (R.

46, 3). Respondents are the Chairman and members of the Board for the Condemnation of Insanitary Buildings in the District of Columbia, hereinafter referred to as the Board, created by the terms of the Act of Congress approved May 1, 1906,[1] 34 Stat. 157 (Secs. 5-601, et seq., D. C. Code, 1940).

By letter dated November 29, 1944 (R. 15), the Board advised petitioner that an examination had been made of her said buildings; that the said buildings were in such insanitary condition, "as specified on accompanying sheets", as to endanger the health and lives of occupants thereof and of persons living in the vicinity. The Board directed petitioner to show cause within not more than ten days why these buildings should not be condemned, and advised Petitioner that upon failure on her part to show sufficient cause, in the opinion of a majority of the Board, said Board would issue an order condemning these buildings. Petitioner was further advised that she was entitled to a hearing before the Board if request therefor in writing was made to the Board within the time to show cause fixed in said letter. On the enclosed specifications the Board enumerated the conditions respecting each of the eleven buildings[2] upon which they had based their conclusions, as follows (R. 16):

"SPECIFICATIONS:

Re: 121 P Street, S. W.

1. Siding rotted and removed to such extent that rain water may enter.
2. Yard water closet enclosure and housing dilapidated, permitting undue exposure of occupants and permitting rain and snow to enter.
3. Holes in siding and floor, permitting rats to enter and harbor in the building.

[1] Petitioner's brief, App. 28.
[2] Notices regarding all of said premises were identical (R. 10).

4. Floors weak, affording danger to life and limb.

5. Windows and frames rotted and decayed, preventing glass to remain and preventing the control of heat and ventilation.

6. Plaster on walls and ceiling broken, permitting vermin to harbor and preventing proper cleaning.

7. Doors and frames broken, preventing the proper control of heat and ventilation.

8. Rear sheds dilapidated, affording danger to life and limb and harboring rodents.

9. Openings in foundation wall permit rodents to harbor and also afford space for accumulation of refuse.

10. Sills rotted, allowing building to settle, thus causing floors to be uneven."

Petitioner did not request a hearing before the Board, and did not show cause why the buildings should not be condemned.

Under date of January 2, 1945, the Board advised petitioner that the aforementioned buildings were condemned (R. 23, 10).

On January 23, 1945, petitioner applied to the Board for an extension of time within which to make repairs to her buildings, and on January 27, 1945, petitioner was granted an extension of time until February 27, 1945, to comply with the aforesaid notice of November 29, 1944 (R. 3).

Petitioner thereafter made certain repairs to her said buildings and requested the Board to approve the repairs so made, and to cancel its orders of condemnation. After making an inspection of the buildings, the Board advised petitioner that the repairs made by her did not remedy, in a manner satisfactory to the Board, the conditions which led to the condemnation of the buildings, and that the Board refused to cancel the orders of condemnation of January 2, 1945 (R. 4).

On March 22, 1946, petitioner filed suit in the District Court of the United States for the District of Columbia against respondents Davis and Cary, and Colonel J. D. Arthur, Jr., the predecessor in office of respondent Madsen, entitled *Minnie Keyes* v. *J. D. Arthur, et al.,* Civil Action 33856, in which petitioner prayed that the Court adjudge that Section 5-603, D. C. Code, 1940, as applied to petitioner's properties, was null and void as in violation of the Fifth Amendment of the Constitution of the United States; that the Court declare the orders of condemnation of January 2, 1945, null and void as beyond the scope of the Board's authority, and that a mandatory injunction issue compelling the Board to cancel the orders of condemnation of January 2, 1945. Respondents moved to dismiss petitioner's complaint, and, on June 10, 1946, after argument, Judge Bailey granted said motion and signed an order dismissing the complaint (R. 25, 47, 48).

By letter dated February 27, 1947, respondent Madsen informed petitioner that following numerous reinspections by its inspectors, and a personal inspection by the members of the Board on January 21, 1947, the Board had found that the repairs ordered by the Board on November 29, 1944, had not been adequately made, and that the buildings were still in such insanitary condition as to be unfit for human habitation (R. 24, 25, 5).

On April 9, 1947, petitioner filed the instant case, entitled *Minnie Keyes* v. *K. E. Madsen, et al.,* Civil Action No. 1508-47, alleging the condemnation of her said buildings, that she, petitioner, had proceeded with due diligence to make all necessary repairs to her buildings, that she had expended considerable sums of money in having the premises repaired and improved, and that the buildings as a whole are sound, sanitary, and safe for human occupancy, and prayed that the Court declare Section 5-603, D. C. Code, 1940, as applied to petitioner's properties, null and void as violative of the Fifth Amendment of the Constitu-

tion of the United States, that the Court vacate said orders as contrary to law, and that a receiver be appointed to take over, manage and control said properties and to collect the rents therefrom pending disposition of said action (R. 3-9).

Respondents answered, denying the allegations of the complaint with respect to the adequacy of the repairs made by petitioner, and denying that the buildings as a whole are sound or sanitary or safe for human occupancy (R. 9-14). By amended answer respondents raised the additional defenses of *res judicata,* alleging that the issues between petitioner and respondents were adjudicated adversely to petitioner in Civil Action No. 33856, entitled *Minnie Keyes* v. *J. D. Arthur, Jr., et al.,* and of estoppel, alleging that petitioner was estopped to question the original order of condemnation (R. 25, 26).

At the pretrial of the above entitled cause the pretrial Judge held that the alleged unconstitutionality of the statute had been disposed of in the prior action, Civil Action No. 33856, leaving for determination the question whether there had been sufficient compliance with the orders of the Board to make its refusal to lift its orders of condemnation unreasonable and arbitrary (R. 27).

The case came on for trial before Judge McGuire, in District Court, on March 9, 1948. Before hearing any testimony the Court granted the request made by petitioner that the Court inspect the premises involved in the above entitled cause, and the Court and counsel for the parties thereupon proceeded to the premises to make such inspection (R. 32).

The Court made Fndings of Fact in part as follows (R. 48):

> "5. During the trial of the instant case, at the invitation of counsel for the plaintiff and with the assent of counsel for the defendants, the Court,

on March 9, 1948, accompanied by counsel for the plaintiff and the defendants, personally inspected the eleven houses described in Finding Number 1. With minor exceptions, conditions in all said eleven houses were identical. The Court observed the following conditions:

"(a) None of the eleven houses was occupied.

"(b) The grade of P Street, on which these houses front and which is to the south of the row, and Canal Street, which is immediately to the west of number 141 P Street, S. W., have been raised above the grade of the ground on which these houses stand. New houses have been built to the present grade of P Street immediately on the east of this row of houses, and to the rear of this row of houses the ground also has been raised to approxmiately the grade of the surrounding streets. In consequence, the eleven houses described in Finding Number 1 stand in a hollow approximately 6 to 8 feet below the grade of the surrounding terrain with a comparatively abrupt upward slope on the front and sides of the row and a somewhat less abrupt upward slope at the rear of the houses. A storm-water outlet is provided at the west end of this hollow, but, because of improper grading, only a small portion of the surface water from the front yards and none of the surface water from the side or rear yards of these buildings reaches this outlet. The area underneath the houses is lower than that of the surrounding ground on any of the sides and surface water collects under the buildings and causes them to be damp.

"(c) The dwellings are of frame structure supported on brick piers and separated by an occasional brick fire wall. The first floors, which are approximately at the grade of the ground in front, are about 3 feet above grade in the rear. The porous nature of the brick forming the piers, fire walls, and chimneys is such that the water which collects under the buildings travels upward by

capillary action and causes dampness in the floors and walls of the buildings. In a number of the houses efflorescence of the plastered walls has occurred.

"(d) The exterior walls of the buildings consist of 2 x 4 studs with weatherboarding on the outside and laths and plaster on the inside. Some few rooms are wainscoted for about half their height on the inside. The weatherboarding is old, worn and cracked. Looseness, numerous small holes, and cracks through the weatherboarding allow the wind and weather access to the interior of the buildings. In some instances openings due to defects exist through both the interior and exterior wall surfaces where it is possible to see directly through from the interior of the buildings to the outside. Several rear walls were so weak that they shook and bulged outward upon moderate pressure.

"(e) The window and door frames have deteriorated considerably. Some were broken, some missing in part, and there are cracks, breaks and rotted sections. Many of the doors and window sash were ill-fitting and worn. In a number of instances the upper and lower sash of the windows either failed to meet or were so ill-fitting that openings remained between the upper and lower sash or between the sash and the window frames. Because of the looseness and ill-fitting of the window sash, most of the windows have been nailed shut and cannot be raised or lowered. Accordingly, the elements are admitted to the buildings and heat and ventilation cannot be controlled.

"(f) The buildings have metal roofs, practically flat, which pitch to the rear. In some instances, probably because of deterioration of the eaves, the metal of the roof has been battened down against the back walls of the buildings so that all roof drainage does not run into the rain gutters, but down the rear walls of the buildings. Evidences of moisture, apparently from this condition in combination with others described, was apparent

in the upper rear rooms of several of the buildings. The drip caps above the windows are missing in many instances and such as have been replaced are attached on the exterior in such a manner that rain water can flow behind such new framing and enter the building.

"(g) The exterior protection around the foundations of the buildings in the rear thereof has many openings through which rats can gain entrance into the structures. Some holes were observed in the interior woodwork, indicating the entrance of rodents into the premises.

"(h) Water for the occupants of these premises is supplied by rear-yard water hydrants, which were found to be in a state of disrepair. These yard water hydrants are provided with below-grade drainage located in the vicinity of sewers and also in the vicinity of yard water closets and contamination is possible.

"(i) The yard water closets were in a state of disrepair. Their superstructures are inadequate, dilapidated and broken. Seats were broken and dirty, and floors were not of impervious material.

"(j) Floors in the buildings and treads of the stairs are worn and rough. The noses of some stair treads were worn off to the extent that they barely support the ball of an adult foot. Floor boarding in a few of the buildings was broken and dirt and filth, to an extent impossible to fully remove, is accumulated in crevices.

"(k) Plaster on the walls and ceilings of the buildings has been broken in many places and cracks and openings therein existed, so that proper cleaning is prevented and a harborage for vermin provided.

"(l) Several of the chimney openings were not provided with flue crocks. Irregular openings provided ample opportunity for the escape within the buildings of flue gases and the consequent dangers of carbon monoxide poisoning. Some chimneys, used in common by adjoining dwellings, had openings which extended through the chimney

from one dwelling to another further complicating the problem of the control of flue gases.

"6. There was evidence that some effort had been made to correct the conditions described. Such repairs have been badly made and demonstrate ineptness and the workmanship of the unskilled handyman. This is apparent as to all of the conditions herein set forth. As examples: In an effort to eliminate ill-fitting window sash the windows had been nailed shut. Pieces of plaster board and metal were nailed over floor defects in some places in an attempt to cover them. Green plaster had been applied to some areas and the resultant shrinkage had left cracks ranging from ⅛ to ¼ inch in width, and plaster patches were in some instances loose and about to fall. In some instances corrugated cardboard had been used for wall covering and, in an attempt to cover wall conditions, all of the walls had been covered with a water paint, which, in a number of instances, had begun to flake off."

The Court concluded as a matter of law, *inter alia,* that:

"9. The refusal by the defendants to lift the order of condemnation of the buildings described in Finding Number 1 was and is entirely justified. The defendants would be derelict in their duty to have done otherwise."

The Court entered judgment in favor of defendants, the United States Court of Appeals for the District of Columbia Circuit affirmed, and petitioner now seeks a review of that judgment.

SPECIFICATION OF ERRORS

Petitioner has not made a specification of such of the assigned errors as are intended to be urged.

Rule 27, par. 2 (e);
Rule 38, par. 2.

SUMMARY OF ARGUMENT

The ordinary meaning of the language used, as well at its legislative history, shows that Congress, by the Act of May 1, 1906, intended to provide for the abatement of nuisances dangerous to life and health. Because the facts vary in each case within the coverage of that Act, it was not only proper but necessary for Congress to use abstract words in stating its legislative policy.

The specifications served upon petitioner by the Board were sufficiently definite to enable her to identify the conditions in her property which led to its condemnation. Petitioner's property consists of a single structure divided into eleven dwelling units all of which had deteriorated to an equal degree, and the specifications furnished by the Board to petitioner necessarily listed identical defects in each of those units.

Even if petitioner had introduced evidence to show that the Board desired to rid the community of her property, such evidence could not have affected the validity of the order of condemnation; for petitioner's property had deteriorated to such an extent that the Board would have been derelict in the performance of its duty if it had not condemned that property, or if it had cancelled its order of condemnation.

ARGUMENT

The Act approved May 1, 1906, creating the Board for the Condemnation of Insanitary Buildings in the District of Columbia, is constitutional on its face.

The statute here in question was enacted by the Congress of the United States in the exercise of its exclusive legislative authority over the District of Columbia, granted by Article 1, Section 8, Clause 17 of the Constitution, to protect the lives and health of the people of the District.

The Act of May 1, 1906 created the Board for the Condemnation of Insanitary Buildings in the District of Columbia, and vested the Board with "* * * jurisdiction and authority to examine into the sanitary condition of all

buildings in said District, to condemn those buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or of persons living in the vicinity, and to cause all buildings to be put into sanitary condition or to be vacated, demolished, and removed, * * *".

The principal contention of petitioner is that Congress failed to establish any standard for the guidance of the Board. If Congress had simply authorized the Board to condemn "insanitary buildings" without more, this contention might have some validity. However, Congress did in fact set up a standard. It authorized the Board to condemn only those buildings which it found to be "in such insanitary condition as to endanger the health or lives of the occupants thereof, or of persons living in the vicinity."

This Court has given express approval to reference to legislative history to determine the intent of Congress. *Harrison* v. *Northern Trust Company*, 317 U. S. 476. Reference to that history shows that the Act approved May 1, 1906 originated as Senate Bill No. 47 of the 59th Congress. In House Report No. 3398 of the First Session on that bill it was stated:

> "This bill requires that such buildings in the District of Columbia as are unfit for habitation by reason of sanitary defects be placed in proper sanitary condition or be demolished. It establishes the administrative machinery and methods necessary to accomplish this end. Legislation has already been enacted for the removal of dangerous or unsafe buildings, but the statute books of the District are silent as to vacating and demolishing buildings incurably bad by reason of sanitary defects.
>
> "*The purpose of this bill is to promote public health.* To accomplish this end *it aims to remove conditions that are universally admitted to dimin-*

ish the stamina of those who come under their influence and that are all but universally admitted to favor the development and spread of infectious diseases. These conditions are dampness, defective ventilation, and insufficient light, in the dwelling. Just in proportion as these conditions injure the individual they injure also the community, which is nothing but an aggregation of individuals. * * *" (Italics supplied.)

Congress is presumed to have used words in their known and ordinary meaning. *Old Colony Railroad Co.* v. *Commissioner of Internal Revenue*, 284 U. S. 552, 560. The aptness of the language employed by Congress to express the stated purposes of the Act is demonstrated by consideration of the dictionary definitions of the words "sanitary" and "insanitary":

> "Sanitary. (F. *sanitaire*, fr. L. *sanitas* health. See SANITY.) Of or pertaining to health; for or relating to the preservation or restoration of health; occupied with measures or equipment for improving conditions that influence health; free from, or effective in preventing or checking, agencies injurious to health, esp. filth and infection; hygienic; as, *sanitary* regulations, engineer, squad, goods."
> "Insanitary. Not sanitary; injurious to health; unhealthy, as, *insanitary* drainage."
> Webster's New International Dictionary, 2nd Edition, unabridged, (1946).

Construing this Act, the Court of Appeals of the District of Columbia in 1912, in the case of *Metzger* v. *Markham*, 38 App. D. C. 383, declared that:

> "Conditions will be different in each case arising under this statute. The necessity for the condemnation of a building depends very largely upon its environment. Circumstances might arise jus-

> tifying the condemnation of a building in one locality that would not authorize such action were it located elsewhere."

The Congress, having adopted the policy of requiring the correction of insanitary conditions of such danger to life and of such infinite variety—in other words, the policy of requiring the abatement of nuisances—was not only justified in stating, but was required to state, that policy in broad general terms, because

> "For time out of mind the term 'nuisance' has been regarded as incapable of definition so as to fit all cases, because the controlling facts are seldom alike, and each case stands on its own footing." *Melker* v. *City of New York*, 190 N. Y. 481, 83 N. E. 565, 567, 16 L. R. A. (N. S.) 621.

The delegation of authority to administrative bodies, by the use of generic words, to carry out clearly stated legislative policies has been consistently upheld by this Court. Thus, in *Lichter* v. *United States*, 334 U. S. 742, 785, in upholding the constitutionality of the Renegotiation Act, notwithstanding its use of the term "excessive profits," this Court, speaking through Mr. Justice Burton, held:

> "It is not necessary that Congress supply administrative officials with a specific formula for their guidance in a field where flexibility and the adaptation of the congressional policy to infinitely variable conditions constitute the essence of the program. 'If Congress shall lay down by legislative act an intelligible principle . . . such legislative action is not a forbidden delegation of legislative power'. *Hampton Co.* v. *United States*, 276 U. S. 394, 409. Standards prescribed by Congress are to be read in the light of the conditions to which they are to be applied. 'They derive much meaningful content from the purpose of the

Act, its factual background and the statutory context in which they appear.' *American Power & Light Co.* v. *S. E. C.*, 329 U. S. 90, 104. • • •

The following, somewhat comparable, legislative specifications are among those which have been held to state a sufficiently definite standard for administrative action:

'Just and reasonable' rates for sales of natural gas, *Federal Power Comm'n* v. *Hope Gas Co.*, 320 U. S. 591, 600-601; 'public interest, convenience, or necessity' in establishing rules and regulations under the Federal Communications Act, *National Broadcasting Co.* v. *United States*, 319 U. S. 190, 225-226; prices yielding a 'fair return,' or the 'fair value' of property, *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 397-398; 'unfair methods of competition' distinct from offenses defined under the common law, *Federal Trade Comm'n* v. *Keppel & Bro.*, 291 U. S. 304, 311-312, 314; 'just and reasonable' rates for the services of commission men, *Tagg Bros. & Morehead* v. *United States*, 280 U. S. 420, 431; and 'fair and reasonable' rent for premises, with final determination in the courts, *Levy Leasing Co.* v. *Siegel*, 258 U. S. 242, 243, 248-250."

Although no criminal offense is here involved, the cases cited in the brief of petitioner support the proposition that legislation defining criminal offenses or providing for forfeitures must ordinarily describe the prohibited conduct with definiteness and certainty. But even in criminal statutes the requirement of definiteness does not prohibit the use of abstract words which convey to an interested person a sufficiently accurate concept of what is forbidden. In *Kovacs* v. *Cooper*, 336 U. S. 77, rehearing denied 336 U. S. 921, in affirming a conviction of violation of the ordinance of Trenton, New Jersey, which forbade use on the city streets of a sound truck which emits "loud and raucous noises" this Court held:

"The contention that the section is so vague, obscure and indefinite as to be unenforceable merits

only a passing reference. This objection centers around the use of the words 'loud and raucous.' While these are abstract words, they have through daily use acquired a content that conveys to any interested person a sufficiently accurate concept of what is forbidden. Last term, after thorough consideration of the problem of vagueness in legislation affecting liberty of speech, this Court invalidated a conviction under a New York statute construed and applied to punish the distribution of magazines 'principally made up of criminal news or stories of deeds of bloodshed or lust, so massed as to become vehicles for inciting violent and depraved crimes against the person.' *Winters* v. *New York*, 333 U. S. 507, 518. As thus construed we said that the statute was so vague that an honest distributor of tales of war horrors could not know whether he was violating the statute. P. 520. But in the *Winters* case we pointed out that prosecutions might be brought under statutes punishing the distribution of 'obscence, lewd, lascivious, filthy, indecent or disgusting' magazines. P. 511. We said, p. 518:

> 'The impossibility of defining the precise line between permissible uncertainty in statutes caused by describing crimes by words well understood through long use in the criminal law—obscene, lewd, lascivious, filthy, indecent or disgusting—and the unconstitutional vagueness that leaves a person uncertain as to the kind of prohibited conduct—massing stories to incite crime—has resulted in three arguments of this case in this Court.'

"We used the words quoted above from page 511 as examples of permissible standards of statutes for criminal prosecution. P. 520. There we said:

> 'To say that a state may not punish by such a vague statute carries no implication that it may not punish circulation of objectionable

> printed matter, assuming that it is not protected by the principles of the First Amendment, by the use of apt words to describe the prohibited publications . . . Neither the states nor Congress are prevented by the requirement of specificity from carrying out their duty of eliminating evils to which, in their judgment, such publications give rise.'
>
> "We think the words of § 4 of this Trenton Ordinance comply with the requirements of definiteness and clarity, set out above."

The Statute is Constitutional and was Constitutionally Applied to Petitioner's Property

The purpose of the Act creating the Board for the Condemnation of Insanitary Buildings, as stated in the House Report on Senate Bill No. 47 (ante p. 11), was to protect the occupants of buildings in the District of Columbia from the hurt done by darkness, dampness, and foul air in the home, and by resulting uncleanliness. The specifications served upon petitioner by the Board (ante p. 2) list defects in petitioner's property—rotten siding, dilapidated yard water closet housing, rotten and decayed window frames, broken doors, rotten sills, holes in foundation walls (R. 16-23)—which would necessarily result in the identical health hazards the Act was designed to correct. That such insanitary conditions did in fact result is amply demonstrated by the Findings of Fact made after a personal inspection of petitioner's property by the Trial Judge (R. 48-52).

In her brief (p. 21) petitioner characterizes as "unique" the fact that identical conditions were listed in the specifications furnished by the Board for " * * * each and every of petitioner's eleven properties * * *." Petitioner's property is a single structure divided into eleven attached dwelling units (R. 3). The Findings of Fact made by the

Trial Judge show (R. 48) that, when inspected by the Court, "With minor exceptions conditions in all said houses were identical." Necessarily, the specifications listing the evidence of neglect and deterioration were identical for each dwelling unit.

It was not petitioner's inability to identify the "conditions which led to the condemnation" (Pet. Br. p. 24) which is the basis of her complaint, for petitioner did make perfunctory efforts to correct, and in some instances to cover up, those very conditions (R. 51). Rather, petitioner's real complaint is that correction of the deplorable condition resulting from decades of neglect will cost more money than petitioner is willing to spend to render houses she rents to "colored tenants * * * of the working class" (R. 3), fit for human habitation.

Petitioner Had A Fair Hearing

In her complaint (R. 7, 8, 57) petitioner alleged that the Board condemned her buildings " * * * because they are now surrounded, with the exception of government buildings on one side, by modern brick buildings * * * ". In her brief (Pet. Br. p. 20) petitioner clarifies this allegation to some extent by characterizing the action of the Board as " * * * an effort to rid the community of an unattractive structure * * * ". Arguing that the action of the pre-trial court in removing from the case the question of the unconstitutional application of the statute to her property deprived her of the opportunity to offer evidence respecting the alleged motives of the Board, petitioner contends that she was not accorded a fair hearing (Pet. Br. p. 25; R. 57).

In its opinion, the Court of Appeals held that the action of the pre-trial court in removing the constitutional question from the case was erroneous, but that " * * * the error in the pre-trial order to which we have referred was immaterial because the Trial Court's emphatic decision on the

factual issue against the appellant was supported by substantial evidence." (R. 57).

The Trial Court found, upon its inspection of petitioner's property, that it was not merely "unattractive", but that it was in such a deplorably insanitary condition as to constitute an active menace to the health of occupants thereof and to the health of the community, and concluded, as a matter of law, that the Board would have been derelict in its duty to have canceled the order of condemnation (R. 54).

In the light of the Findings of Fact and Conclusions of Law of the Trial Court, there can be no question that the actions of the Board in issuing and in refusing to cancel the order of condemnation were within the scope of its authority. In that situation, evidence respecting the alleged motives of the Board at most would have proved only that the Board members were not "disagreeably impressed by the fact that (their) action injuriously affects the claims of particular individuals." *Compare Spalding* v. *Vilas*, 161 U. S. 483, 499.

During the trial, petitioner through her counsel requested the Trial Judge to make a personal inspection of petitioner's property, in an effort to prove that the "repairs" made by petitioner warranted the Board in withdrawing its original order of condemnation, and the Court granted that request (R. 32). The Findings of Fact made by the Court as a result of its inspection were necessarily detailed and complete. When a building has been condemned as being in such an insanitary condition as to endanger the health or the lives of occupants, it is obvious that the only repairs which will justify the canceling of that order must be such as to render the building fit for human occupancy. It is significant that petitioner does not challenge the accuracy of the Court's Findings of Fact; her only complaint is that the Court, after inspecting her property at her request, reported the true condition of her property.

CONCLUSION

For the reasons hereinbefore stated, it is respectfully submitted that the petition for writ of certiorari should be denied.

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